

Message Text

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C O N F I D E N T I A L STATE 094674

E.O. 11652: GDS

TAGS: PFOR, SZ

SUBJECT: CSCE: SWISS PROPOSAL FOR THE PEACEFUL SETTLEMENT
OF DISPUTES

REF: GENEVA A-137; GENEVA 2815

1. IN VIEW OF LONGSTANDING US SUPPORT FOR IMPARTIAL
MACHINERY FOR THE PEACEFUL SETTLEMENT OF DISPUTES, WE WOULD
LIKE TO BE AS POSITIVE AS POSSIBLE IN RESPONDING TO THE
SWISS SUGGESTION OF AD HOC POST-CSCE EXPERTS' DISCUSSIONS
OF A NEW SYSTEM FOR PEACEFUL SETTLEMENT OF DISPUTES. THIS
WOULD CONFORM TO OUR GENERAL POSITION THAT WE COULD ACCEPT
AD HOC CSCE TECHNICAL FOLLOW-ON ACTIVITIES, IF THEY SERVE
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A USEFUL PURPOSE. AT THE SAME TIME, YOU SHOULD ATTEMPT,

TACTICALLY, TO PREVENT AGREEMENT ON AD HOC TECHNICAL EXPERTS' MEETINGS ON PEACEFUL SETTLEMENT FROM CAUSING SLIPPAGE TOWARD ESTABLISHMENT OF POST-CONFERENCE PERMANENT MACHINERY WITH POLITICAL/SECURITY MANDATE. IT SHOULD ALSO BE EMPHASIZED THAT OUR GENERAL POSITION REMAINS THAT INTERNATIONAL DISPUTES INVOLVING POLITICAL/SECURITY QUESTIONS SHOULD BE HANDLED BY EXISTING MACHINERY.

2. YOU SHOULD BE GUIDED BY THE ABOVE CONSIDERATIONS IN RESPONDING TO THE SWISS INITIATIVE AND IN TREATING THE SPECIFIC PROPOSALS BELOW.

3. WE FIND PROPOSALS 2 AND 4 (YUGOSLAV PAPER) THE MOST PROMISING FOR FUTURE STUDY BY EXPERTS. UNDER PROPOSAL 2, EXPERTS MIGHT CONSIDER DEVELOPING A MODEL ARBITRATION CLAUSE, WHICH PARTICIPATING STATES WOULD PLEDGE THEMSELVES TO INSERT INTO CERTAIN CATEGORIES OF AGREEMENTS. THIS APPROACH IS CONSISTENT WITH EARLIER DEPARTMENT VIEWS SET FORTH IN STATE 40650, MAY 3, 1973.

4. UNDER PROPOSAL 4, THE SWISS SYSTEM MIGHT BE DEVELOPED AND AGREED FOR CERTAIN FIELDS WHICH COULD BE MADE SUBJECT TO COMPULSORY JURISDICTION OF NEW ARBITRATION MACHINERY. WE ARE NOT PREPARED AT THIS TIME TO DEFINE WHAT THOSE FIELDS MIGHT BE, BUT WE ARE SKEPTICAL THAT OUTER SPACE LAW OR LAW OF THE SEA, SUGGESTED BY SWISS QUESTIONNAIRE, WOULD BE SUITABLE SUBJECTS, SINCE THIS MIGHT HAVE THE UNDESIRABLE EFFECT OF CREATING A "EUROPEAN LAW" IN THESE AREAS. BOUNDARY QUESTIONS AND INTERPRETATION AND APPLICATION OF TREATIES, ON THE OTHER HAND, MAY WELL BE PROMISING FIELDS FOR FUTURE DISCUSSION. WE COULD LIVE WITH APPROACH TO PROPOSAL 4 DESCRIBED PARA A OF THE FIRST QUESTION IN THE SWISS QUESTIONNAIRE, BUT WOULD PREFER ENUMERATING SUBSTANTIVE AREAS TO WHICH COMPULSORY JURISDICTION WOULD ATTACH AS IN PARA B.

5. PROPOSAL NUMBER 5 (YUGOSLAV PAPER), FOR COMPULSORY PROCEDURES (WITH NON-BINDING RESULTS) FOR "CLARIFYING" LAW AND FACT APPEARS OVERLY AMBITIOUS UNLESS LIMITED TO CERTAIN CATEGORIES OF DISPUTE, BUT WE WOULD BE WILLING

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TO CONSIDER IT FURTHER IF THERE APPEARS TO BE AN EMERGING CONSENSUS ON STUDYING THIS ALTERNATIVE AT A POST-CONFERENCE MEETING OF EXPERTS.

6. WE FIND PROPOSALS 1 AND 3 OF LITTLE INTEREST. SINCE NO DELEGATION, EXCEPT THE SWISS, HAS EXPRESSED A WILLINGNESS TO ACCEPT THE CONVENTION IN TOTO, PROPOSAL 1 DOES NOT SEEM FEASIBLE. PROPOSAL 3, TO USE THE SWISS SYSTEM AD HOC,

WOULD ADD NOTHING AND MERELY DUPLICATE EXISTING
MACHINERY.

7. AS CSCE DISCUSSIONS GO FORWARD ON SWISS PROPOSAL, WE
WILL CONTINUE TO ASSESS US POSITION. TO HELP OUR ONGOING
ASSESSMENTS, WE WOULD APPRECIATE US DELEGATION'S REPORTING
ON LIKELIHOOD OF CONSENSUS ON POST-CONFERENCE TECHNICAL
EXPERTS' TALKS AND WOULD BE ESPECIALLY INTERESTED IN VIEWS
OF EC NINE. RUSH

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